

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2737 of 2009

JUDGMENT :

The instant Civil Miscellaneous Appeal is preferred by respondent No.2 – The Oriental Insurance Company Limited, aggrieved by the judgment and decree dated 02.04.2008, passed in O.P.No.1769 of 2002 by the Chairman, I Additional Motor Accidents Claims Tribunal, Nizamabad (for brevity “the Tribunal”), whereby and whereunder, a sum of Rs.5,42,000/- was awarded as compensation with interest at 7.5% per annum from the date of petition till the date of deposit of the amount, as against the claim of Rs.10,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for brevity “the Act”) for the death of one Era Chinnaiah, who died in a motor accident that occurred on 12.10.2002, on the ground that the compensation awarded by the Tribunal is excessive and arbitrary, as no legally acceptable evidence was forthcoming from the claimant's side and hence sought to set aside the same.

2. The appellant - The Oriental Insurance Company Limited is respondent No.2, respondent Nos.1 and 2 are the petitioners-claimants, and respondent No.3 – owner of the offending Auto bearing No.AP 25T 9725 is respondent No.1 in O.P.No.1769 of 2002.

3. For the sake of convenience, the parties are referred to as they were arrayed in the O.P., before the Tribunal.

4. The facts need no advertence, as they are not in dispute.

5. For the death of one Era Chinnaiah, who is husband of the 1st petitioner and father of the 2nd petitioner, when a claim was laid for a compensation of Rs.10,00,000/-, under Section 166 of the Act, the Tribunal, having analyzed the evidence on record and by applying the structural formula, taking the income of the deceased as Rs.4,500/- per month on agriculture, after deducting 1/3rd towards his personal living expenses and by applying the multiplier '15', basing on entry in II-Schedule to Section 163-A of the Act, arrived at a sum of Rs.5,40,000/- towards loss of dependency, besides awarding a sum of Rs.2,000/- towards funeral expenses, but however, not granting any amounts towards the other heads and, thus awarded a total compensation of Rs.5,42,000/-.

6. Heard Sri G. Purushotham Rao, learned Standing Counsel for the appellant – insurer, and Sri P. Radhiv Reddy, learned counsel appearing for respondent Nos.1 and 2 – claimants. The 3rd respondent – owner of the offending Auto is shown as not a necessary party in the cause title of the grounds of appeal, therefore, no process was resorted to so far as the 3rd respondent is concerned.

7. The main submission of the learned Standing Counsel for the appellant – insurer is, P.W.1, in her cross-examination, admitted that she has not filed any document showing that her husband was having 3 ½ acres of land and raising commercial crops in the said land etc., and despite the same, the Tribunal fixed the income of the deceased as Rs.4,500/-per month, which it ought not to have done, and ought to have fixed his notional income as per the II-Schedule of the Act and ought to have awarded a sum of Rs.1,75,000/- and, in all, the Tribunal ought to have awarded a sum of Rs.2,00,000/- towards compensation.

8. Learned counsel for respondent Nos.1 and 2 – claimants, on the other hand, would support the judgment and decree of the Tribunal.

9. Though, the learned Standing Counsel for the appellant – insurer has drawn the attention of this Court to the aforesaid admission of P.W.1, it is not the case of the appellant – insurer that Ex.A.6 – Photostat copy of the Pattadar Pass Book was totally rejected by the Tribunal. In fact, the learned Standing Counsel for the insurer before the Tribunal ought to have focused attention on the contents of Ex.A.6 and ought to have confronted P.W.1, which he did not do so. Thus, by putting a suggestion, which is not in direct form got elicited, such an admission from P.W.1, who appears

to be hailing from a rural background, cannot be taken into consideration and the same has to be ignored.

10. Though, the learned Standing Counsel for the appellant – insurer contended that there has been a suggestion that the vehicle, in which the deceased was travelling, was overloaded, that was not the ground agitated in the grounds of appeal. Such a ground was not ventilated even before the Tribunal and, as such, no issue was framed in that regard.

11. Now, turning to the amount of compensation determined by the Tribunal, it is no doubt true, multiplier factor '15' was taken for a person of the age group of 45 years, as per the law declared by the Hon'ble Apex Court in SARLA VERMA & OTHERS V. DELHI TRANSPORT CORPORATION AND ANOTHER¹, but the fact remains is that the Tribunal ignored the Statutory mandate of granting conventional sums i.e., loss of consortium and loss of estate, except granting a sum of Rs.2,000/- towards funeral expenses. Further, as no additional amount was granted towards loss of future prospects, certainly, the compensation of Rs.5,42,000/- granted by the Tribunal cannot be construed as excessive or arbitrary. Even the rate of interest at 7.5% per annum awarded by the Tribunal is in tune with the decision of the

¹ (2009) 6 Supreme Court Cases 121

Hon'ble Apex Court in RAJESH AND OTHERS V. RAJBIR SINGH AND OTHERS².

12. For the aforesaid reasons, there are no merits in the instant Civil Miscellaneous Appeal and the same is accordingly dismissed. No order as to costs.

13. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

15.11.2016.
Msr



² 2013 ACJ 1403

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